No. 87-1938

IN THE SUPREME COURT
OF THE UNITED STATES

October Term 1987

Interstate Commerce Commission,
Petitioner

v.

State of Texas, et al.,
Respondents

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

Brief of Armstrong World Industries, Inc., and Reeves Transportation Company, Respondents Supporting Petitioner

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ISSUE PRESENTED

Whether Service Storage & Transfer Co. v. Virginia, 359 U.S. 171 (1959), and Jones Motor Co. v. Pennsylvania Public Utility Commission, 361 U.S. 11, petitions for rehearing and clarification denied 361 U.S. 904 (1959), required the Fifth Circuit to enjoin, in aid of its jurisdiction to review an Interstate Commerce Commission order approving certain interstate transportation, a state court proceeding brought to prevent the operations specifically approved in the agency order under review?

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Come now Armstrong World Industries, Inc.[1] [hereinafter called Arm-

1. Armstrong has no parent company. Its subsidiaries/affiliates are as follows: Applied Color Systems, Inc.; Armstrong

(Footnote continued on next page.)

trong], and Reeves Transportation Company[2] [hereinafter called Reeves],

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Cork Company (Wilmington, Del.); Armstrong Cork Finance Corporation; Armstrong Ventures, Inc.; ArmStar (an unincorporated entity); Armstrong World Industries (Del.), Inc.; Charleswater Products, Inc.; Chemline Industries, Inc.; Forms + Surfaces, Inc.; BEGA/FS, Inc.; I.W. Investments, Inc.; Thomasville Furniture Industries, Inc.; Fayette Enterprises, Inc.; Gilliam Furniture, Inc.; Westchester Leather, Inc.; The W. W. Henry Company; ACS Applied Color Systems, G.m.b.H.; Armstrong AWI Limited; Armstrong FSC, Inc.; Armstrong (Japan) K.K.; Armstrong-Nylex Pty. Ltd.; Armstrong (Singapore) Pte. Ltd.; Armstrong World Industries Canada Ltd.; Armstrong World Industries - France, S.A.; Armstrong World Industries, G.m.b.H.; Armstrong World Industries - Isolanti S.r.l.; Euroflex S.r.l.; Armstrong World Industries Ltd.; Armstrong Cork Company (London, England); Armstrong Cork (Ireland) Limited; Armstrong Europe Services; Inarco Limited; Armstrong World Industries Pty. Ltd.; Armstrong World Industries, S.A.; Armstrong World Industries (Schweiz) A.G.; ISO Holding, A.G.; Armstrong World Industries - ACI, B.V.; Triboard Emmen, B.V.; Armstrong World Industries - Alphacoustic, S.A.; Armstrong World Industries - Europacoustic.

2. Reeves is a wholly-owned subsidiary of Preston Corporation. Preston Corporation also has other wholly-owned subsidiaries.

and submit their reply supporting the petition of the Interstate Commerce Commission [hereinafter called the ICC or the Commission] for issuance of a writ of certiorari to the United States Court of Appeals for the Fifth Circuit [hereinafter called the Fifth Circuit].

SUMMARY OF ARGUMENT

The state court's judgment in Texas v. E&B Carpet Mills, et al., No. 386,524 (Travis County, Tex., District Court May 11, 1988), effectively negates the Fifth Circuit's ability to uphold the ICC's order that is under review in Texas v. United States, No. 87-4725 (filed October 15, 1987) [hereinafter called Texas v. United States]. Enjoining the Texas state court proceeding in Texas v. E&B was

therefore necessary in aid of the Fifth Circuit's jurisdiction over Texas v. United States.

ARGUMENT[3]

This petition was filed because of a direct conflict between state and federal authorities over which can control a specific trucking operation. Only one can prevail. The principle at stake is an important one - whether a state may ignore the federal government's authorization of certain trucking operations in interstate commerce, and enjoin the conduct of those operations.

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3. Armstrong and Reeves adopt the statement of the case contained in the ICC's petition for writ of certiorari. In addition, respondents note that they filed a motion for new trial in Texas v. E&B on June 9, 1988.

I. The Transportation Approved by the ICC in the Order Under Review in Texas v. United States Has Been Enjoined By the Texas State Court

In Armstrong World Industries, Inc.- Transportation Within Texas- Petition for Declaratory Order, 2 I.C.C.2d 63 (1986), petitions to reopen denied, slip op. Aug. 25, 1987 [hereinafter called Armstrong PDO], the ICC held that Reeves' delivery of Armstrong's Georgia-produced carpet from Armstrong's Arlington, Tex., facility to other points in Texas was proper under Reeves' ICC operating authority and an ICC rate tariff filed by Reeves. The Reeves tariff permits temporary storage of Armstrong's carpet at the Arlington facility before it is delivered to Armstrong's customers. Under these circumstances, the Commission found that Reeves'

service was the final leg of a continuing interstate movement from Georgia to Armstrong's Texas customers.

The ICC's holding applied specifically to carpet that had not been designated before shipment from Dalton, Ga., for shipment to specific Armstrong customers beyond Arlington. The ICC's ruling in Armstrong PDO has been pending before the Fifth Circuit for review under 28 U.S.C. §§2321 and 2342(5) since October 15, 1987.

The Travis County, Tex., district court recently nullified the effect of the Commission's holding in Armstrong PDO. The movements at issue in Armstrong PDO were the same movements at issue in Texas v. E&B. On May 11, 1988, the state court rejected the defense by Reeves and Armstrong that the movements before the court were parts of continuing interstate move-

ments, and enjoined Reeves from conducting those movements unless the carpet was designated for a specific Armstrong customer before shipment from Dalton. In other words, the state court enjoined the very service that the ICC approved in Armstrong PDO.

II. The State Court Injunction Interferes with the Fifth Circuit's Jurisdiction by Nullifying the Court's Ability to Approve the ICC Order Under Review

The Fifth Circuit erred in holding that Texas v. E&B does not interfere with the court's jurisdiction to review the ICC's Armstrong PDO order. The Texas state court cannot directly review the ICC's order, but that is not the only test of whether the state court's action interferes with the Fifth Circuit's jurisdiction.

The Texas court's injunction directly interferes with the Fifth Circuit's jurisdiction by rendering the court's review of the Armstrong PDO meaningless. The state's injunction prevents the transportation that is at issue before both courts from being performed, even if the Fifth Circuit upholds the ICC's ruling. The Fifth Circuit's review thus becomes meaningless, except as a stepping-stone to this Court.

The effective nullification of Fifth Circuit review of Armstrong PDO caused by the state court's injunction required the Fifth Circuit to enjoin the state proceeding to protect federal jurisdiction. The state court's injunction impermissibly impinges upon the Fifth Circuit's jurisdiction by preventing a ruling upholding the ICC's order from having any practical effect. A clearer example of

interference with the court's ability to decide the case before it can hardly be conceived. An injunction against the state court proceeding was therefore necessary in aid of the Fifth Circuit's jurisdiction. See Atlantic Coast Line Railroad v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 295 (1970) [hereinafter called ACL v. BLE].

III. The Fifth Circuit Misapplied ACL v. BLE In Determining Not to Enjoin Texas v. E&B

The Fifth Circuit misapplied ACL v. BLE below. ACL v. BLE does not apply below because the state court does not have jurisdiction to decide whether Reeves' use of its ICC operating authority is proper.

The Fifth Circuit relied on ACL v. BLE below as a basis for denying the ICC's

injunction request. See Appendix A to the ICC's petition herein, p. 5a, n. 4.

ACL v. BLE involved a federal district court's refusal under federal law to enjoin union picketing connected with a rail labor dispute. The railroad being picketed then sought and obtained an injunction against the picketing in state court, under state law. Subsequently, the picketing union persuaded the federal district court that federal law required it to enjoin enforcement of the state injunction to protect its order denying the railroad's request for a federal injunction.

This Court struck down the federal court's injunction. The Court concluded that the injunction was not necessary in aid of the district court's jurisdiction and therefore fell outside the exceptions

to the Anti-Injunction Act, 28 U.S.C. §2283 (1982). The Court's ruling relied heavily on the fact that both courts involved had jurisdiction to consider the railroad's injunction requests and the union's federal law defense to those requests. See ACL v. BLE, 398 U.S. at 295.

This Court's decisions show that the Travis County court does not have jurisdiction over the federal defense asserted by Reeves and Armstrong in Texas v. E&B. In Service Storage & Transfer Co. v. Virginia, 359 U.S. 171 (1959) [hereinafter called Service Storage], this Court vacated Virginia's decision that a trucking company could not properly use its interstate operating authority for a specified operation. The loads at issue originated at and were destined to points

in Virginia, but the carrier moved them through a West Virginia terminal. The state charged the carrier with illegal intrastate transportation. The carrier defended its service as being authorized by its ICC certificate, but the Virginia authorities ruled that the carrier's use of its ICC authority was merely a subterfuge to avoid state regulation.

This Court struck down the Commonwealth's ruling. The Court held that Congress had placed exclusive initial responsibility for determining the proper scope of operations under ICC authority on the ICC. See also Jones Motor Co. v. Pennsylvania Public Utility Commission, 361 U.S. 11, petitions for rehearing and clarification denied 361 U.S. 904 (1959) [hereinafter called Jones Motor]. The Court directed the Commonwealth to present its

grievance with the carrier's use of its ICC authority to the ICC.

Service Storage and Jones Motor show that Texas state courts have no jurisdiction to rule on Reeves' and Armstrong's defense in Texas v. E&B that the service at issue is a valid exercise of ICC operating authority. Thus, ACL v. BLE did not apply below, and was wrongly found by the Fifth Circuit to prevent it from enjoining Texas v. E&B.

An injunction by this Court against enforcement of the judgment in Texas v. E&B is presently the only practical means to protect the federal rights of Reeves and Armstrong. Armstrong and Reeves tried in vain to convince the Travis County court to dismiss Texas v. E&B, or to at least hold that proceeding in abeyance

pending the outcome of Armstrong PDO and review of that decision. Likewise, Armstrong and Reeves have tried to convince both the United States District Court for the Western District of Texas and the Fifth Circuit to protect the rights declared by the ICC. All of these efforts have been fruitless. Unless this Court directs the Fifth Circuit to enjoin enforcement of the judgment in Texas v. E&B, Reeves and Armstrong will irretrievably lose their ability to exercise their lawful federal rights. Even if those rights are later restored, Reeves and E&B cannot be compensated for their loss in the interim.

CONCLUSION

WHEREFORE, the foregoing considered, Armstrong and Reeves pray that this Court grant the petition for writ of certiorari filed herein by the ICC, and further pray that the Court summarily reverse the Fifth Circuit's orders at issue here.

Respectfully submitted,

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